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FISH & ASSOCIATES, PC ROBERT D. FISH 2603 Main Street Suite 1000 Irvine, CA 92614-6232			FLOOD, MICHELE C	
			ART UNIT	PAPER NUMBER
			1655	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/599,663	Applicant(s) MILJKOVIC, DUSAN	
	Examiner MICHELE FLOOD	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/10/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on March 10, 2010.

Claims 1, 3-18 and 20 are under examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Sceopul (N) per the teachings of Freudenberg (U). Newly applied.

Applicant claims a cosmetic composition comprising a composition prepared from a whole *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry is a dried *Coffea spec.* (coffee) that is primarily red or almost ripe, and that has a mycotoxin level of less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. Applicant further claims the composition of claim 1 wherein the *Coffea spec.* (coffee) cherry is a quick-dried *Coffea spec.* (coffee) cherry having a mycotoxin level of less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins; and, wherein the composition prepared from whole *Coffea spec.* (coffee) cherry is a preparation from a quick-dried *Coffea spec.* (coffee) cherry. Applicant further

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claims the cosmetic composition of claim 4 wherein the *Coffea spec.* (coffee) cherry is quick-dried under a protocol that limits a mycotoxin level of the *Coffea spec.* (coffee) cherry to less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. Applicant further claims the cosmetic composition of claim 1 wherein the composition prepared from the whole *Coffea spec.* (coffee) cherry comprises at least one of an aqueous extract and an alcoholic extract; wherein the composition prepared from the whole *Coffea spec.* (coffee) cherry comprises at least one of an aqueous extract and an alcoholic extract, wherein the extract is prepared from at least two of a bean of the *Coffea spec.* (coffee) cherry, a pulp of the *Coffea spec.* (coffee) cherry, a mucilage of the *Coffea spec.* (coffee) cherry, and a hull of the *Coffea spec.* (coffee) cherry; and wherein the composition prepared from whole *Coffea spec.* (coffee) cherry is an extract of the *Coffea spec.* (coffee) cherry and comprises at least two classes of compounds selected from the group consisting of coffee acids, coffee polyphenols, essential monosaccharides, coffee mucilage polysaccharides, and trigonelline, and wherein the at least two classes of compounds are present in the extract in an amount of at least 1% of the extract. Applicant further claims the cosmetic composition of claim 8 wherein the coffee acids include a compound selected from the group consisting of chlorogenic acid, ferulic acid, and caffeic acid. Applicant further claims the cosmetic composition of claim 1 wherein the composition is formulated as one of a shampoo, a lotion, a cream, a balm, and an ointment; further comprising an information associated with the composition that the composition comprises the composition prepared from whole

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Coffea sp. (coffee) cherry; and, further comprising an information associated with the composition that the composition has an effect selected from the group consisting of an antioxidant effect, an anti-inflammatory effect, a UV (ultraviolet)-protective effect, an antimutagenic effect, a chemoprotective effect, a scar reducing effect, a skin-lightening effect, a moisturizing effect, a wrinkle reduction effect, and an antibacterial effect.

Sceopul teaches a cosmetic composition prepared from whole, sub-ripe coffee cherry, *i.e.*, the entire green fruit of coffee (*Coffea arabica*). See Column 1 of page 1, third paragraph to Column 2, line 7. Sceopul teaches, "Extracts of flowers and green fruit of the coffee plant obtained as follows: Flowers and fruit are washed with cold water and crushed in double cylinder extractors or electric grinders, giving creamy extracts varying in colour from yellow to grey-blue. Extract is purified and stabilizes with known preservatives and may be lyophilized to give fine stable powder." See abstract. As Sceopul teaches that whole, sub-ripe coffee cherry is used to prepare the extracts for cosmetic preparations, each of a bean of the coffee cherry, a pulp of the coffee cherry, a mucilage of a coffee cherry and a hull of the coffee cherry is inherent to the reference composition preparations. On page 1, second Column, line 36 to page 2, line 7, Sceopul further teaches that the cherry coffee extracts comprise sugars (9.5%), caffeic acid, tannic acids (8.4%), *etc.* The extracts are used in the making of shampoo, lotion, cream, balm, and sunscreen. See page 1, Column 1, second paragraph; and examples. Sceopul also teaches that the extract comprises caffeic acid (a coffee acid) and cafetannic acid (a coffee polyphenol). The Sceopul' patent provides information associated with the compositions that the compositions protect the skin and hair from

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extraneous influences, and exhibit astringent, vasomotive, tonifying effect on cutaneous tissue and moisturizing activity on skin and moisturizing and protective effect of keratin of the hair.

Please note that the cited reference is considered to read on the claimed subject matter because the cosmetic composition taught by Sceopul comprises chemical compounds that can be extracted from whole *Coffea spec.* (coffee) cherry using any of an aqueous solvent and/or an alcohol solvent to extract at least two classes of compounds, namely caffeic acid (a coffee acid) and cafetannic acid (a coffee polyphenol), from at least two of a bean of the *Coffea spec.* (coffee) cherry, a pulp of the *Coffea spec.* (coffee) cherry, a mucilage of the *Coffea spec.* (coffee) cherry, and a hull of the *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry is a dried or a quick-dried *Coffea spec.* (coffee) that is primarily red or almost ripe, and that has a mycotoxin level of less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins, and wherein the *Coffea spec.* (coffee) cherry is quick-dried under a protocol that limits a mycotoxin level of the *Coffea spec.* (coffee) cherry to less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. For example, Freudenberg teaches extracting caffeic acid and chlorogenic acid from dried coffee berries using water and alcohol as solvents. Since the coffee acid and coffee polyphenol comprising the Sceopul' cosmetic compositions are indistinguishable from any of the compounds comprising the dried coffee berry solvent extracts of Freudenberg, the claimed composition is inherent to the teachings of Sceopul because

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there is no structural difference between the claimed composition and the prior art composition. Moreover, Applicant readily admits that the two compounds comprising the Sceopul can be readily extracted from the claim-designated plant material using at least one of an aqueous solvent and an alcohol solvent.

With respect to the claimed information associated with the claim-designated product, please note that it is legally well established that information of a known composition (such as the cosmetic composition comprising caffeic acid and caffetanic acids as disclosed by the cited reference) does not lend patentable distinction to the composition, *per se*. That is, a prior art product, packaged with printed instructions to show its new use, is not patentable - - see, *e.g.*, *In re Haller*, 73 USPQ 403 (CCPA 1947). Further, the cosmetic composition taught by Sceopul remains functional absent such information; and, therefore, no functional relationship exists between the information and the composition would be given patentable weight - - see, *e.g.*, *In re John Ngai and David Lin* (Fed. Cir. 1983). Accordingly, this claim limitation (*i.e.*, information associated with the composition that the composition comprises the composition prepared from whole *Coffea spec.* (coffee) cherry) has not been given any patentable weight.

The reference anticipates the claimed subject matter.

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Claims 1, 3-6 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishibe et al. (O; Translation of foreign language patent provided herein.) per the teachings of Clifford (V). Newly applied.

Applicant's claimed invention was set forth above.

Nishibe teaches a cosmetic composition an aqueous and/or alcohol extract of a green bean obtained from a ripe coffee cherry containing chlorogenic acid (0.5 to 30%) having an inhibitory action on formation of lipid peroxides, an ultraviolet absorbing action and an inhibitory action on melanism. Nishibe further teaches that monod, dicaffeoylquinic acid (caffeoylquinic acid), and its mixture, 3-,4- and 5-caffeoylquinic acid, or its mixtures can also comprise the cosmetic. See [0014-0018]. The Nishibe' composition may be in the form of lotion, cream, ointment or shampoo. See [0001].

Please note that the cited reference is considered to read on the claimed subject matter because the cosmetic composition taught by Nishibe comprises chemical compounds that can be extracted from whole *Coffea spec.* (coffee) cherry using any of an aqueous solvent and/or an alcohol solvent to extract coffee acid compounds, e.g., chlorogenic acid, as well as monod, dicaffeoylquinic acid (caffeoylquinic acid), and its mixture, and 3-,4- and 5-caffeoylquinic acid, from a coffee bean of the *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry is a dried or a quick-dried *Coffea spec.* (coffee) that is primarily red or almost ripe, and that has a mycotoxin level of less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins, and wherein the *Coffea spec.* (coffee) cherry is quick-dried under a protocol that limits a mycotoxin level of the *Coffea*

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spec. (coffee) cherry to less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. For example, Clifford reports the findings of a study assessing the change, with coffee fruit maturity, in the content of chlorogenic acids, caffeine and trigonelline in freeze-dried coffee beans of four different *Coffea sp.* As illustrated in Figures 2A-D, the most striking change for each type of bean was the pronounced sigmoidal increase in the total accumulation of caffeoylquinic acid in parallel with the total dry matter gain, and representing between 5% and 12% thereof, whereas there was a linear increase of caffeine and trigonelline on a mass per 100 bean basis. Since the chlorogenic acids comprising the Nishibe' cosmetic compositions are indistinguishable from any of the compounds comprising the mature freeze-dried coffee berry water solvent extracts of Clifford, the claimed composition is inherent to the teachings of Nishibe because there is no structural difference between the claimed composition and the prior art composition. Moreover, Applicant readily admits that the chlorogenic acids comprising the cosmetic compositions taught by Nishibe can be readily extracted from the claim-designated plant material using at least one of an aqueous solvent and an alcohol solvent.

With respect to the claimed information associated with the claim-designated product, please note that it is legally well established that information of a known composition (such as the cosmetic composition comprising chlorogenic acid and its associated coffee acid mixtures as disclosed by the cited reference) does not lend patentable distinction to the composition, *per se*. That is, a prior art product, packaged with printed instructions to show its new use, is not patentable - - see, *e.g.*, *In re Haller*,

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73 USPQ 403 (CCPA 1947). Further, the cosmetic composition taught by Nishibe remains functional absent such information, and, therefore, no functional relationship exists between the information and the composition would be given patentable weight - see, e.g., *In re John Ngai and David Lin* (Fed. Cir. 1983). Accordingly, this claim limitation (*i.e.*, information associated with the composition that the composition comprises the composition prepared from whole *Coffea spec.* (coffee) cherry has not been given any patentable weight.

The reference anticipates the claimed subject matter.

Claims 1, 3-7 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pugliese et al. (A*) per the teachings of Suzuki et al. (W) and Suzuki (X). Newly applied.

Applicant's claimed invention was set forth above.

Pugliese teaches a cosmetic composition in the form of a patch for reducing human cellulite and reduction of other fatty tissues comprising a xanthine structure (50-60%) selected from caffeine, theophylline, and theobromine.

Please note that the cited reference is considered to read on the claimed subject matter because the cosmetic composition taught by Pugliese comprise chemical compounds that can be extracted from whole *Coffea spec.* (coffee) cherry using any of an aqueous solvent and/or an alcohol solvent to extract at least two classes of compounds, namely caffeic acid (a coffee acid) and cafetannic acid (a coffee polyphenol), from at least two of a bean of the *Coffea spec.* (coffee) cherry, a pulp of

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the *Coffea spec.* (coffee) cherry, a mucilage of the *Coffea spec.* (coffee) cherry, and a hull of the *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry is a dried or a quick-dried *Coffea spec.* (coffee) that is primarily red or almost ripe, and that has a mycotoxin level of less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins, and wherein the *Coffea spec.* (coffee) cherry is quick-dried under a protocol that limits a mycotoxin level of the *Coffea spec.* (coffee) cherry to less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. For example, on page 67 under "2.1 Harvesting fruits", Suzuki teaches (W), "Fruits were detached at various stages ranging from 10 days after petal all to maturity (about 8 months) dried at 100°C for 1.5 h and then at 80°C for 6h, and placed in a desiccator overnight. Suzuki further teaches extracting the quick-dried coffee cherries using water as a solvent and chloroform as solvents and analyzing the contents of the extract (containing caffeine, theobromine and theophylline). In Table 1, Suzuki (W) shows that appreciable levels of caffeine (7500 $\mu\text{g g}^{-1}$ dry wt.), theobromine (59 $\mu\text{g g}^{-1}$ dry wt.) and theophylline (28 $\mu\text{g g}^{-1}$ dry wt.) were observed in coffee fruits (yellow-red coffee cherry) at 5-6 months of bean growth maturity, while at 4 months (green coffee cherry) only caffeine (7900 $\mu\text{g g}^{-1}$ dry wt.) and theobromine (55 $\mu\text{g g}^{-1}$ dry wt.), while decreasing levels of caffeine were observed in coffee fruits at 7-8 months of bean growth maturity. In another instance, Suzuki (X) shows the distribution of caffeine, theobromine and theophylline between seed and pericarp of *Coffea arabica* fruits at different stages of development. See Table 3. Suzuki teaches, "The pattern of growth of the *Coffea*

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arabica fruit was almost identical to that previously reported [completed citation omitted; Suzuki and Waller, 1984a). Table 3 shows the distribution of caffeine, theobromine and theophylline, between pericarp and seed of *Coffea arabica* fruits. Caffeine and theobromine were found in both seed and pericarp but theophylline in the pericarp of the ripened (red) fruits only.” Since the xanthines comprising the Pugliese’ cosmetic compositions are indistinguishable from any of the compounds comprising the dried coffee berry solvent extracts of Suzuki (W and/or X), the claimed composition is inherent to the teachings of Pugliese because there is no structural difference between the claimed composition and the prior art composition. The reference anticipates the claimed subject matter.

With respect to the claimed information associated with the claim-designated product, please note that it is legally well established that information of a known composition (such as the cosmetic composition comprising caffeine, theophylline or and theobromine as disclosed by the cited reference) does not lend patentable distinction to the composition, *per se*. That is, a prior art product, packaged with printed instructions to show its new use, is not patentable - - see, *e.g.*, *In re Haller*, 73 USPQ 403 (CCPA 1947). Further, the cosmetic composition taught by Pugliese remains functional absent such information, and, therefore, no functional relationship exists between the information and the composition would be given patentable weight - - see, *e.g.*, *In re John Ngai and David Lin* (Fed. Cir. 1983). Accordingly, this claim limitation *i.e.*, information associated with the composition that the composition comprises the

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composition prepared from whole *Coffea spec.* (coffee) cherry has not been given any patentable weight.

The reference anticipates the claimed subject matter.

Claims 1, 3-6 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Stuckler et al. (P) per the teachings of Clifford (V). Newly applied.

Stuckler teaches a cosmetic composition comprising trigonelline (in amount of at least 1%) for topical administration, e.g., as lotions or shampoos, for nail, skin and hair care, and for reducing hair loss and for stimulating hair growth.

Please note that the cited reference is considered to read on the claimed subject matter because the cosmetic composition taught by Stuckler comprises chemical compounds that can be extracted from whole *Coffea spec.* (coffee) cherry using any of an aqueous solvent and/or an alcohol solvent to extract trigonelline from at a bean of the *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry is a dried or a quick-dried *Coffea spec.* (coffee) that is primarily red or almost ripe, and that has a mycotoxin level of less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins, and wherein the *Coffea spec.* (coffee) cherry is quick-dried under a protocol that limits a mycotoxin level of the *Coffea spec.* (coffee) cherry to less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. For example, Clifford reports the findings of a study assessing the change, with coffee fruit maturity, in the content of chlorogenic acids, caffeine and trigonelline in freeze-dried

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coffee beans of four different *Coffea* sp. As illustrated in Figures 2A-D, the most striking change for each type of bean was the pronounced sigmoidal increase in the total accumulation of caffeoylquinic acid in parallel with the total dry matter gain, and representing between 5% and 12% thereof, whereas there was a linear increase of caffeine and trigonelline on a mass per 100 bean basis. Since the trigonelline comprising the Stuckler ' cosmetic compositions is indistinguishable from any of the compounds comprising the dried coffee berry solvent extracts of Clifford, the claimed composition is inherent to the teachings of Stuckler because there is no structural difference between the claimed composition and the prior art composition. Moreover, Applicant readily admits that the trigonelline comprising the Stuckler' cosmetic composition can be readily extracted from the claim-designated plant material using at least one of an aqueous solvent and an alcohol solvent.

With respect to the claimed information associated with the claim-designated product, please note that it is legally well established that information of a known composition (such as the cosmetic composition comprising trigonelline as disclosed by the cited reference) does not lend patentable distinction to the composition, *per se*. That is, a prior art product, packaged with printed instructions to show its new use, is not patentable - - see, *e.g.*, *In re Haller*, 73 USPQ 403 (CCPA 1947). Further, the cosmetic composition taught by Stuckler remains functional absent such information; and, therefore, no functional relationship exists between the information and the composition would be given patentable weight - - see, *e.g.*, *In re John Ngai and David Lin* (Fed. Cir. 1983). Accordingly, this claim limitation (*i.e.*, information associated with

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the composition that the composition comprises the composition prepared from whole *Coffea spec.* (coffee) cherry has not been given any patentable weight.

The reference anticipates the claimed subject matter.

Claims 1, 3-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourret (Q) per the teachings of Fischer et al. (U1) and Coleman et al. (V1). Newly applied.

Applicant's claimed invention of Claims 1, 3-9 and 12-14 was set forth above. Applicant further claims the cosmetic composition of claim 8 wherein the essential monosaccharides include a compound selected from the group consisting of arabinose, fucose, mannose, xylose, and galactose.

Bourret teaches a composition comprising fenugreek mucilages in the form of flour with grain size distribution less than 100 μ , consisting of 60 wt.% of oses, relative to the composition total weight, namely mannose, galactose, glucose, arabinose, xylose, rhamnose, D-galacturonic acid, 50-55 wt.% of oses consisting of galactomannans, and 5 wt.% of proteins. The invention also concerns galactomannans consisting exclusively as oses, of mannose and galactose, with a mannose/galactose ratio of 1, 1.2, and intrinsic viscosity higher than 10 dl.g⁻¹, in particular 10 to 12 dl.g⁻¹, the degree of polymerisation ranging between 4900 and 6500 and the average molecular mass M_v between $1.4 \cdot 10^6$ and $2 \cdot 10^6$ daltons. Bourret further teaches, "The invention is applicable to food, cosmetic and pharmaceutical industry." On page 34, line 25 bridging page 35, line 5, Bourret teaches that the composition may be in the

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form of lotions, creams, shampoos, protective creams, masks and shampoos. On page 41, Bourret teaches incorporating the essential monosaccharide/galactomannan composition into a liquid suspension comprising an antibiotic.

Please note that the cited reference is considered to read on the claimed subject matter because the cosmetic composition taught by Bourret comprises chemical compounds that can be extracted from whole *Coffea spec.* (coffee) cherry using any of an aqueous solvent and/or an alcohol solvent to extract at least two classes of compounds, particularly essential monosaccharides including galactose, glucose, from at least two of a bean of the *Coffea spec.* (coffee) cherry, and a mucilage polysaccharide of the *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry is a dried or a quick-dried *Coffea spec.* (coffee) that is primarily red or almost ripe, and that has a mycotoxin level of less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins, and wherein the *Coffea spec.* (coffee) cherry is quick-dried under a protocol that limits a mycotoxin level of the *Coffea spec.* (coffee) cherry to less than 20 (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppm for total fumonisins. For example, Fischer teaches an alcohol extract of green beans of *Coffea Arabica* comprise fucose, rhamnose, arabinose, galactose, glucose, xylose, and mannose (55.8%) in Table 1, and galactomannan (see Table 4). In another instance, Coleman teaches extraction of crude coffee cherry mucilage with ethanol to obtain a galacturonic acid fraction comprising arabinose, galactose, xylose and rhamnose. Since the essential monosaccharides comprising the Bourret' cosmetic compositions are

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indistinguishable from any of the compounds comprising the dried coffee berry solvent extracts of Coleman and Fischer, the claimed composition is inherent to the teachings of Bourret because there is no structural difference between the claimed composition and the prior art composition. Moreover, Applicant readily admits that the two compounds, namely essential monosaccharides and mucilage polysaccharides comprising the composition taught by Bourret can be readily extracted from the claim-designated plant material using at least one of an aqueous solvent and an alcohol solvent.

With respect to the claimed information associated with the claim-designated product, please note that it is legally well established that information of a known composition (such as the cosmetic composition comprising essential monosaccharides and mucilage polysaccharides) does not lend patentable distinction to the composition, *per se*. That is, a prior art product, packaged with printed instructions to show its new use, is not patentable - - see, *e.g.*, *In re Haller*, 73 USPQ 403 (CCPA 1947). Further, the cosmetic composition taught by Bourret remains functional absent such information; and, therefore, no functional relationship exists between the information and the composition would be given patentable weight - - see, *e.g.*, *In re John Ngai and David Lin* (Fed. Cir. 1983). Accordingly, this claim limitation (*i.e.*, information associated with the composition that the composition comprises the composition prepared from whole *Coffea spec.* (coffee) cherry has not been given any patentable weight.

The reference anticipates the claimed subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pugliese et al. (A*) in view of Suzuki et al. (W), Suzuki (X) and The Free Dictionary by Farlex (W1). Newly applied.

Applicant claims a method of marketing a cosmetic composition comprising a step of providing the cosmetic composition and a further step of providing an information that the composition comprises a composition prepared from a whole *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry used for the composition prepared from the whole *Coffea spec.* (coffee) cherry is a sub-ripe, non-green, dried *Coffea spec.* (coffee) cherry that has a mycotoxin level of less than 20 ppb

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(part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppb for total fumonisins.

Pugliese teaches a cosmetic composition in the form of a patch for reducing human cellulite and reduction of other fatty tissues comprising a xanthine structure (50-60%) selected from caffeine, theophylline, and theobromine. Therefore, Pugliese teaches Applicant's first step method of marketing a cosmetic composition by providing a cosmetic composition. However, the reference is silent as to the source of xanthines used in the making of the anti-cellulite patch composition used for cosmetic purpose. Thus, the teachings of Pugliese, as set forth above, teach Applicant's instantly claimed method of marketing a cosmetic composition comprising a step of providing the cosmetic composition and a further step of providing an information that the composition comprises a composition prepared from a quick-dried whole *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry used for the composition prepared from the whole *Coffea spec.* (coffee) cherry is a sub-ripe, non-green, dried *Coffea spec.* (coffee) cherry that has a mycotoxin level of less than 20 ppb (part-per-billion) for total aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppb for total fumonisins; and except for wherein the information is associated with the cosmetic composition; and except for wherein the information is printed on at least one of a container containing the cosmetic composition and a package containing the container. However, modification of the composition taught by Pugliese for use in a method of marketing method as disclosed by Applicant would have been obvious to one of ordinary skill in the art because at the time of the invention Suzuki (W) taught a method

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of extracting caffeine, theobromine and theophylline from quick-dried coffee cherries (*Coffea arabica*). For example, on page 67 under “2.1 Harvesting fruits”, Suzuki teaches (W), “Fruits were detached at various stages ranging from 10 days after petal all to maturity (about 8 months) dried at 100°C for 1.5 h and then at 80°C for 6h, and placed in a desiccator overnight. Suzuki further teaches extracting the quick-dried coffee cherries using water as a solvent and chloroform as solvents and analyzing the contents of the extract (containing caffeine, theobromine and theophylline). In Table 1, Suzuki (W) shows that appreciable levels of caffeine (7500 $\mu\text{g g}^{-1}$ dry wt.), theobromine (59 $\mu\text{g g}^{-1}$ dry wt.) and theophylline (28 $\mu\text{g g}^{-1}$ dry wt.) were observed in coffee fruits (yellow-red coffee cherry) at 5-6 months of bean growth maturity, while at 4 months (green coffee cherry) only caffeine (7900 $\mu\text{g g}^{-1}$ dry wt.) and theobromine (55 $\mu\text{g g}^{-1}$ dry wt.), while decreasing levels of caffeine were observed in coffee fruits at 7-8 months of bean growth maturity. In another instance, Suzuki (X) shows the distribution of caffeine, theobromine and theophylline between seed and pericarp of *Coffea arabica* fruits at different stages of development. See Table 3. Suzuki teaches, “The pattern of growth of the *Coffea arabica* fruit was almost identical to that previously reported [completed citation omitted; Suzuki and Waller, 1984a). Table 3 shows the distribution of caffeine, theobromine and theophylline, between pericarp and seed of *Coffea arabica* fruits. Caffeine and theobromine were found in both seed and pericarp but theophylline in the pericarp of the ripened (red) fruits only.” Thus, at the time the invention was made, one of ordinary skill in the art would have been motivated and would have had a reasonable expectation of success to modify the method of providing a cosmetic composition of

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Pugliese as disclosed by Suzuki (W and/or X) to provide the claimed invention because Suzuki teaches that appreciable amounts of xanthines can be readily extracted from red or yellow-red quick-dried coffee cherries, especially given that one would have had a high expectation that the process for extracting the caffeine, theobromine and theophylline from the quick-dried coffee cherries would be free or essentially free of aflatoxins, ochratoxins and fumonisins known in the art to be detrimental to the health of humans and animals; and, thereby undesirable contaminants in the making of cosmetics intended for use by mammals. Given that Suzuki (W and/or X) correlates the formation, accumulation and biodegradation of caffeine, theobromine and theophylline as a function of the maturation of coffee fruit growth and the coloration of the outer surface of the coffee cherry from green to yellow-red or red to brown-black, the choice of a primarily red or almost ripe dried *Coffea spec.* (coffee) cherry, it would have been will within the purview of the ordinary artisan at the time of the invention to use the claim-designated plant material for in the making of the xanthines comprising the composition taught by Pugliese, especially given that it was well known in the art that the cited references of Suzuki teach that increased amounts of xanthine components are found in ripened or matured coffee fruit.

The obviated teachings of Pugliese in combination with Suzuki (W and/or X) are set forth above. While the obviated teachings teach the instantly claimed composition and while the combined references disclose information associated with the obviated composition thereof, the combined references do not teach a method of marketing the

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instantly claimed composition. However, The Free Dictionary by Farlex the concept of marketing a product generally entails the following aspects:

“The activities of a company associated with buying and selling a product or service. It includes advertising, selling and delivering products to people. People who work in marketing departments of companies try to get the attention of target audiences by using slogans, packaging design, celebrity endorsements and general media exposure. The four 'Ps' of marketing are product, place, price and promotion. Notes: Many people believe that marketing is just about advertising or sales. However, marketing is everything a company does to acquire customers and maintain a relationship with them. Even the small tasks like writing thank-you letters, playing golf with a prospective client, returning calls promptly and meeting with a past client for coffee can be thought of as marketing. The ultimate goal of marketing is to match a company's products and services to the people who need and want them, thereby ensure profitability”.

Thus, given the teachings of the combined teachings as a whole, the instantly claimed method would have been *prima facie* obvious because a method of marketing a cosmetic composition wherein the information about the cosmetic product is printed on at least one of a container containing the formulation and a package containing the container would have been well within the purview of one ordinary skill in the art at the time the invention was made. One of ordinary skill in the art would have been motivated and one would have had a reasonable expectation of success to augment the teachings of the combined references to provide the instantly claimed method of marketing a cosmetic prepared from a whole *Coffea spec.* (coffee) cherry, wherein the whole *Coffea spec.* (coffee) cherry used for the composition prepared from the whole *Coffea spec.* (coffee) cherry is a primarily red or almost red, dried or quick-dried *Coffea spec.* (coffee) cherry that has a mycotoxin level of less than 20 ppb (part-per-billion) for total

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aflatoxins, less than 10 ppb for total ochratoxins, and less than 5 ppb for total fumonisins, as taught by the obviated teachings set forth above, because the base teaching of Pugliese provides detailed information heralding the beneficial functional activities of the product upon application, as well as all of the ingredients and amounts of ingredients used in the making of the reference formulations. Therefore, the instantly claimed method would have been no more than a matter of routine optimization to provide a result effect variable for the commercialization of the cosmetics taught by the combined teachings, especially since the information associated with such a composition would promote and emphasize the fact that it was low in mycotoxins; and, therefore non-toxic and fit for human and animal use. Furthermore, common sense would have dictated and rendered the claimed method of marketing *prima facie* obvious to one of ordinary skill in the art because at the time the invention was made it was old and conventional in the art of marketing a cosmetic, such as the compositions taught by the primary reference of Pugliese, that the placement of printing or printed material on a container detailing information about the cosmetic, as well as on the packaging the container, was beneficial in providing a vehicle for containing the product and a viable means for the mass distribution, delivery and storage of the product wherein the printed information on the container provides a means for the identification, promotion and sale of a product to a consumer base in want or need of a cosmetic product having beneficial functional effects.

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Accordingly, the claimed invention was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE FLOOD whose telephone number is (571)272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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